STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

KENNARD R. FISHER,

Defendant-Appellee.

UNPUBLISHED
February 18, 2003

No. 237271
Wayne Circuit Court
LC No. 01-005051

Before: O'Connell, P.J., and Fitzgerald and Murray, JJ.

PER CURIAM.

The prosecutor appeals as of right the order granting defendant's motion to suppress the evidence and to quash the information. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was a passenger in a car with a cracked windshield. Police officer Boatwright stopped the car and as he and his partner, police officer Angelovski, approached, Angelovski saw defendant reach down toward the floor with his right hand. Once beside the vehicle, Angelovski looked through the window and saw a handgun protruding from beneath the passenger seat. Defendant was arrested and charged with carrying a concealed weapon (CCW), MCL 750.227, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b.

The trial court ruled that the police did not have probable cause to stop the vehicle, that the evidence was insufficient to create probable cause to believe that defendant committed the crime of CCW, and that the charges of felony-firearm and felon in possession of a firearm were barred on double jeopardy grounds. The prosecutor challenges only the first and second rulings on appeal.

This Court reviews a trial court's factual findings at a suppression hearing for clear error, but reviews the ultimate ruling on a motion to suppress de novo. *People v Marcus Davis,* 250 Mich App 357, 362; 649 NW2d 94 (2002). The trial court's factual findings are clearly erroneous if, after review of the record, this Court is left with a definite and firm conviction that a mistake has been made. *People v Givans,* 227 Mich App 113, 119; 575 NW2d 84 (1997).

The prosecutor contends that the court erred in ruling that the stop was illegal because the evidence showed that the officers stopped the car because it had a cracked windshield, an ordinance violation.

"In order to effectuate a valid traffic stop, a police officer must have an articulable and reasonable suspicion that a vehicle or one of its occupants is subject to seizure for a violation of law." *People v Williams,* 236 Mich App 610, 612; 601 NW2d 138 (1999) (footnote omitted). Thus, on reasonable grounds shown, an officer may stop and inspect a vehicle for an equipment violation. *Id*.; MCL 257.683(2). Likewise, an officer may stop a vehicle if he has probable cause to believe a traffic violation has occurred or was occurring. *Davis, supra* at 363.

Angelovski testified that Boatwright made the traffic stop on the basis of the cracked windshield. It is the "objective facts known to the police officers who effected the traffic stop [that] should be considered in determining whether the stop was justified by reasonable suspicion regardless of whether the officers subjectively relied on those facts." *People v Oliver,* 464 Mich 184, 200; 627 NW2d 297 (2001). Here, the cracked windshield justified the stop and therefore, the trial court erred in suppressing the evidence. *People v Chambers,* 195 Mich App 118, 120-121; 489 NW2d 168 (1992).

The prosecutor also contends that the trial court erred in granting the motion to quash because the evidence was sufficient to create a question of fact whether defendant had possession of the weapon.[1]

It is a felony for a person to carry a dangerous weapon, concealed or otherwise, in a vehicle operated or occupied by him. MCL 750.227(1). The elements of the crime are (1) the presence of a weapon in a vehicle operated or occupied by the defendant, (2) that defendant knew or was aware of the weapon's presence, and (3) that the defendant was "carrying" the weapon. *People v Nimeth,* 236 Mich App 616, 622; 601 NW2d 393 (1999). "Carrying" is similar to possession and denotes intentional control or dominion over the weapon. *People v Butler,* 413 Mich 377, 390 n 11; 319 NW2d 540 (1982), citing *State v Benevides*, 425 A2d 77 (RI, 1981). CCW is a general intent crime. *People v Combs*, 160 Mich App 666, 673; 408 NW2d 420 (1987). The only intent necessary is intent to do the prohibited act, i.e., to knowingly carry the weapon in a vehicle. *Id*. Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

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[1] The prosecutor has not addressed the trial court's dismissal of the felon in possession and felony-firearm charges on double jeopardy grounds and thus this Court need not consider the ruling as to those charges. *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 175; 568 NW2d 365 (1997). This Court notes, however, that the trial court erred in dismissing the other charges on double jeopardy grounds. Convictions for both CCW and felon in possession of a firearm do not violate the constitutional prohibition against double jeopardy. *People v Mayfield,* 221 Mich App 656, 661-662; 562 NW2d 272 (1997). Felony-firearm cannot be predicated on an underlying charge of CCW. MCL 750.227b(1). In this case, it was predicated on the charge of felon in possession of a firearm. A conviction of both felon in possession of a firearm and felony-firearm does not violate the constitutional prohibition against double jeopardy. *People v Dillard,* 246 Mich App 163; 631 NW2d 755 (2001).

The weapon was found in a car occupied by defendant. The defendant was seen reaching down between his legs and within moments Angelovski spotted the gun on the floorboard in front of the passenger seat where defendant was sitting. Defendant's gesture toward the floor where the gun was found was sufficient to create a reasonable inference that defendant was knowingly carrying the weapon.

Reversed.

/s/ Peter D. O'Connell
/s/ E. Thomas Fitzgerald
/s/ Christopher M. Murray